

Virginia Small Business Preferences

- ❖ Small business preferences are procurement preferences for SWaM, i.e. small, small woman-owned, and small minority-owned businesses
- ❖ Small business preferences are not direct preferences in Code but preferences implemented indirectly through Code Section 2.2-4310 (C) which gives the Governor certain authority.....

“Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law.”

- ❖ Executive Order 103 (2005) issued by Governor Warner implemented small business preferences for state agencies, including....

“1. The statewide aspirational goal of 40 percent of the Commonwealth’s discretionary spending in combined prime and sub contracts for small business including businesses owned by women and minorities.”

“7. The implementation of small business enhancement tools, including but not limited to, the small business set-aside, unbundling of selected State contracts, small procurements under \$5,000, and early posting of potential contract awards.”

- ❖ Executive Order 33 (2006) issued by Governor Kaine enforced preferences and directed DMBE to formulate procurement policies and procedures, including.....

“DMBE, in consultation with executive branch entities and institutions with procurement policy responsibilities, shall formulate policies and procedures for the Commonwealth’s small business set-aside program and implement small business enhancement tools, including but not limited to, the unbundling of selected State contracts, increasing SWaM participation on small procurements under \$5,000 and the early posting of potential contract opportunities.”

- ❖ Code Section 2.2-1402 (6) transferred authority to develop and require implementation of SWaM procurement regulations to the Department of Minority Business Enterprises

“6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned businesses as may be authorized by the Governor pursuant to subsection C of § [2.2-4310](#) and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law.”

- ❖ As a result of the above and other changes, the following Small Business preferences were implemented among others.....
 - **Mandatory Small Business Set-Asides.** Reserving a procurement transaction exclusively for a specific group. The purpose of small business set-asides is to award certain contracts exclusively to small businesses. Mandatory below \$50,000 and below \$5,000 without competition.
 - **Award to Other than the Lowest Priced Bidder or Highest Ranking Offeror .** Procurements over \$50,000 may be awarded to a reasonably priced or reasonably ranked DMBE-certified small business bidder or offeror that is other than the lowest priced bidder or highest ranking offeror.
 - **Prime Contractor Small Business Subcontracting Plan.** Unless the procurement has been set-aside for DMBE-certified small businesses or a determination, signed by the chief purchasing officer and supported by factual evidence explaining in sufficient detail why no subcontracting opportunities exist, all agencies and institutions shall include in the terms and conditions, the requirement for a Small Business Subcontracting Plan for the award of any prime contract in excess of \$100,000.
 - **Automatic Evaluation Points for Small Business in Negotiated Procurements.** When using numerical scoring, a small business factor will be included and the weight for this evaluation criterion shall be at least 20% of the total evaluation points. Small businesses automatically receive for being a small business 20% of the points designed to evaluate quality, schedule, and price in determining the successful offeror, which may give small business an advantage.
- ❖ Fair and Reasonable Price. Code of Virginia Section 2.2-4300 (C) states, “*To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost,.....*” All procurements, including SWaM procurements, must be awarded at prices that are fair and reasonable.
- ❖ Not all public bodies have implemented the preferences above. The rules vary by area such as technology, non-technology, construction and higher education.